# STATE OF MICHIGAN

# COURT OF APPEALS

| | |
|---|---|
| HOME-OWNERS INSURANCE COMPANY, as Subrogee of WEST SHORE SERVICES,<br><br>Plaintiff-Appellant,<br><br>v<br><br>BRIGADE FIRE PROTECTION, INC.,<br><br>Defendant-Appellee. | UNPUBLISHED<br>February 25, 2010<br><br>No. 288701<br>Ottawa Circuit Court<br>LC No. 07-057673-NZ |

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order of the circuit court granting defendant's motion for directed verdict. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case stems from water damage sustained at a building in Allendale owned by West Shore Services, subrogor of plaintiff. Plaintiff argued before the lower court that West Shore hired defendant to "design, reconfigure, and install a fire suppression/sprinkling system" in its building. Allegedly, pipes that are a part of this system burst on February 17, 2004, causing significant water damage to the building. Plaintiff paid for the repairs on behalf of its insured and filed suit to recover monies expended, arguing the defendant had acted negligently in designing, installing, and repairing the sprinkler system. The court granted defendant's motion for directed verdict, concluding that there existed "no basis on which reasonable minds could differ as to defendant's involvement" in the occurrence, as there was "no evidence to support a finding that the defendant contributed to the failure which occurred on February 17, 2004." Thereafter, plaintiff sought reconsideration, arguing that its case was predicated on two theories: (1) "that the Defendant negligently reconfigured and installed a fire suppression system," and (2) "that Defendant negligently inspected the fire suppression system." The court denied the motion.

On appeal, plaintiff argues that it was error for the court to grant the motion for directed verdict before taking the testimony of plaintiff's expert witness. Plaintiff claims that its expert would have been able to explain why the improper design of the sprinkler system led to the damage caused. "[I]t is well settled that in order to preserve the issue of the admissibility of evidence for appeal, the proponent of evidence excluded by the trial court must make an offer of

proof." *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 291; 730 NW2d 523 (2006). MRE 103(a)(2) provides as follows:

> Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
>
> * * *
>
> (2) In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Because the expert was never called, the substance of the evidence was not provided "from the context within which questions were asked." Accordingly, we focus on whether plaintiff made the substance of the expert's testimony known to the court.

Plaintiff did not provide the court with an offer of proof before the court ruled on the motion for directed verdict and plaintiff failed to set forth such proof in its motion for reconsideration. Moreover, plaintiff's opening argument focused not on the redesign of the system but on improper testing of it. Accordingly, when the motion for directed verdict was granted and the motion for reconsideration denied, the court had nothing to adjudge the substance of the expert's testimony.[1] *Coates v Bastian Bros, Inc*, 276 Mich App 498, 502; 741 NW2d 539 (2007).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis

[1] Plaintiff did indicate that a report and photographs prepared by Williams would be admitted, but none of these exhibits was offered or admitted, nor was their content made known.